

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4712 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

PRAFUL B PANDYA

Versus

STATE OF GUJARAT

Appearance:

MS BANNA S DUTTA for Petitioner
MR ST MEHTA, APP for Respondent No. 1
NOTICE UNSERVED for Respondent No. 2
MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/10/1999

ORAL JUDGEMENT

Leave to amend.

Heard learned counsel Ms. Dutta appearing for
the petitioner, learned APP Mr. ST Mehta for Respondent
no.1 State and Mrs. P.J. Davawala, learned Standing
Counsel appearing for Respondent no.3.

The petitioner has prayed that the criminal proceedings initiated against him under sec. 220(3) of the Companies Act, 1956 should be quashed and set aside as he was not a Director of the Company at the relevant point of time. It is submitted that a complaint has been filed by respondent no.3 against the petitioner and other five accused under the above said provisions for violation in submitting company's balance-sheet and profit & loss account together with all other relevant documents required to be attached and/or annexed for the financial year ending on 31st March,1998. Criminal case is filed in the court of the learned Addl. Chief Judicial Magistrate, Ahmedabad and the same is registered as Criminal Case No. 497/99. The petitioner has produced a zerox copy of the certified copy issued by the Registrar of Companies which indicates that the present petitioner has resigned as a Director in the year 1996. So, he cannot be prosecuted for the alleged irregularities even if it is committed by the company or other directors on the Board of Directorate. It seems that the department has committed bona fide mistake considering the names available on record with the office. Learned Central Government Counsel Mrs. Davawala, after going through the certificate issued by the Registrar of Companies, in response to the query raised by the Court, has fairly submitted that a director who was not the director in a particular financial year, cannot be prosecuted. Learned APP Mr. Mehta appearing for the State of Gujarat has nothing to add. Under the circumstances, submissions canvassed by the learned counsel for the petitioner shall have to be accepted. I agree that there is also substance in the submission made by learned Standing Counsel Mrs. Davawala that such an application should have been made before the concerned Chief Judicial Magistrate and could have prayed for dropping of proceedings. However, this submission, being technical in nature, is not accepted and one should not

be compelled to go before the Criminal Court to face trial where he is not the accused at all.

In the result, this application is allowed. Criminal proceedings pending before the learned Addl. Chief Metropolitan Magistrate, Ahmedabad being Criminal Case No. 497/99 are hereby quashed and set aside qua the present petitioner Praful. B. Pandya - original accused no.3.

Rule is made absolute to the aforesaid extent.

01.10.1999 [C.K. BUCH, J]

*rawal

